

250—CARTER & OTHERS APPEAL } July Term 1847, No. 33.
Cert. }
To O. C. Philadelphia. } Jacob Fink, deceased's Estate.

Last Will and Testament of Jacob Fink, deceased.

Be it remembered, that I, Jacob Fink, of the county of Philadelphia, and State of Pennsylvania, stocking-weaver, being of sound mind and memory, blessed be Almighty God for the same, as also for other his blessings; but, considering the uncertainty of this transitory life, and desirous to regulate my temporal concerns in a satisfactory manner, have thought proper to make this my last will and testament, in manner and form following, that is to say:—

Firstly—It is my particular will and desire that all my just debts and funeral expenses be fully paid and satisfied out of my estate, immediately after my decease.

Item—I give and bequeath unto my beloved daughter Catherine, (wife of Emanuel Krail,) the sum of one hundred dollars, which sum shall be paid to her so soon after my decease as it conveniently can be done.

Item—My household and kitchen furniture and all moveable articles generally, it is my wish shall be regularly and fairly appraised, and a proper inventory thereof taken, and should any of my children feel desirous to possess themselves of the same, or any part thereof, they or either of them will be at liberty so to do, conditioned that they shall pay the appraised value therefor. The residue thereof, if any there be, shall be disposed of to the best advantage, and the net proceeds thereof held subject to the provisions hereinafter made as to the residue of my estate.

Item—It is further my will that the net annual income only, of all the residue and remainder of my estate, real, personal and mixed, shall be divided as follows: four fifth parts of said net annual income, shall go to the use of my children, Adam, George, Catherine, (wife of Emanuel Krail,) and Jacob, in equal and just proportions, share and share alike, during all the term and terms of their natural lives, respectively, and the distribution and division of the same shall be and take place whenever my executors, hereinafter named, shall be in funds therefrom in the amount of one hundred dollars or more, if any of my aforesaid children shall desire it. And the remaining one fifth part of said net annual income I give and bequeath unto the children of my deceased daughter Elizabeth, (and Lawrence Schnably,) in equal and just proportions, share and share alike; and I hereby enjoin it on my executors to invest the said one fifth part in productive stock or public securities, for the use of said children; and as said children respectively shall arrive at full age their respective shares shall be given to them.

Item—After the decease of my aforesaid children, I give, devise and bequeath, unto the lawful children of my son Adam, in equal

and just proportions, share and share alike, to be divided between them, and unto their lawful heirs forever, one fifth part of all the residue and remainder of all my estate; one fifth part of my said estate I give, devise and bequeath, in like manner, unto the children lawfully begotten of my son George, and to their heirs, forever; one fifth part of my said estate I give, devise and bequeath, in like manner, unto the lawful children of my daughter Catherine, and to their heirs, forever; one fifth part of my said estate I give, devise and bequeath, unto the lawful children of my son Jacob, and to their heirs, forever, in like manner; and the remaining one fifth part of my said estate, I give, devise and bequeath, unto the children of my deceased daughter Elizabeth, and to their heirs, forever, to be in like manner divided between them in equal and just proportions, share and share alike. And it is further my will, that, as the children of my deceased daughter Elizabeth are to have their respective portions of the net income of my estate whenever they shall arrive at full age, so it is also my will and desire that the others, my grand-children, shall have their respective portions of said net income as they respectively arrive at full age; so that when the division of my estate takes place between my said grand-children, such of them as shall have received their full share and portion of said net income, shall only, then and at that time, receive their just share and portion of said residue of my estate, reserving to the others their part or portions of that part of the net income to which they may be justly entitled. And the division of my remaining and residuary estate thus given, devised and bequeathed, shall take place when the youngest of my grand-children shall have attained the age of twenty-one years, and not before. Should circumstances however, render it necessary or expedient that any part of my estate should be sold, or should it be deemed advantageous to sell the whole of my estate, they shall have power so to do, and they are hereby empowered to execute any and every instrument for the granting and conveying thereof, and of making good and perfect titles thereto, to the purchaser or purchasers, and the moneys thereon arising and remaining, shall be invested in mortgages, ground rents, public stock, or other productive property, and the interest, rents, dividends, or annual or quarterly proceeds thereof, shall be divided in the manner provided for in the division of the net annual income of my estate—and all such investments or re-investments shall be held in trust for the same uses, as if no such investments or re-investments had been made: and provided also, that before any such sale or sales shall be made, the consent of all my children, or their legal representatives, and also the consent of my deceased daughter Elizabeth's children, and during their minority the consent of their guardians, shall have first been obtained in writing: their respective consents being had, my executors are hereby empowered to invest, re-invest again, and so toties quoties.

Lastly—I appoint my sons Adam and Jacob, and my son-in-law Emanuel Krail, herein before mentioned, (and husband of my daughter Catherine,) to be the executors of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof I have hereunto set my hand and affixed my seal this fifteenth day of May, A. D. eighteen hundred and twenty-four, (1824.)

his
JACOB FINK. [SEAL]
mark

Sealed, signed, published and declared by the testator, }
to be his last will and testament, in presence of us. }

WILLIAM SPRIGGS, JOHN KERR.

Probate and Letters Testamentary to all the Executors, July 7, 1824

*Executors of the Estate of Jacob Fink, dec'd, in Account with the
said Estate, (filed with Register of Wills, May 14, 1824.)*

1824 DR.

July, To amount of Inventory filed in the Register's
office, viz,

	In stock,	-\$1128 30
	Cash,	228 43
	Household furniture,	291 71
	L. Schnable's bond and mortgage,	950 00
	Cash received from Callender Irwin, due the estate,	258 00
	Rent due from real estate from Au- gust 1824 to February 1827,	705 80
	Amount due from Adam Fink, one of the executors, for rent,	112 50
	Amount due from Jacob Fink, one of the executors, for rent,	165 20

		\$3829 94

1824 CR.

July 10,	Cash paid Eliz. Rose, for attending funeral,	\$ 1 00
	Do. Saml. Bacon, inviting,	1 50
	Do. H. Baker, hearse,	4 00
13,	Do. Fred. Steiner, dec'd, tailor's bill,	12 62
	Do. L. Schnable, right of burial ground,	4 00
	Do. Adam Fink, on acct. of work,	5 00
	Do. Miss T. Fleckenstein, spinning,	25 00
	Do. Ad. Fink, in full for work,	37 00
15,	Do. Miss Patterson, on acct. of spinning,	25 00
20,	Do. Messrs. Bruner, account for wool,	100 00
21,	Do. F. Hoppinslie, digging grave,	1 50
	Do. Cath'n. Woolbert, attending funeral,	9 75
22,	Do. John Marke, coffin and attending appraisement,	20 00
	Do. Wm. Spriggs, work and attending appraisement,	7 60
	Do. Margt. Fink, housework,	4 50
	Do. Filing appraisement in the Regis- ter's office,	0 37½
	Do. Cartage of furniture,	0 50
	Do. Geo. Fink, for work,	10 40

29,	Do.	For printing funeral notice, -	2 50
31,	Do.	Saml. Fleckenstein, worsted yarn,	1 93
	Do.	Adam Fink, for work, -	11 70
	Do.	Jacob Fink, for bread delivered, furniture per appraisement, -	69 60
	Do.	H. Crilly, for soap, -	2 97
	Do.	T. Steel, iron work, -	2 50
	Do.	Geo. Fink, work, -	2 60
	Do.	Eml. Kral, acct. of money borrowed, furniture per appraisement,	54 25
Aug't. 9,	Do.	Mr. Kuhn, interest on bond and notes, -	33 00
	Do.	Mrs. Patterson, for spinning, -	50 00
	Do.	Geo. Fink, double yarn, -	2 00
	Do.	I. Jones, hauling, -	0 50
	Do.	Physician for attendance on dec'd,	4 50
	Do.	J. Reese, wine and rose water,	1 56
	Do.	Minister attending funeral, -	6 00
10,	Do.	Danl. Eisen, soft soap, -	2 50
	Do.	Mr. Kuhn, interest, -	9 00
	Do.	J. Streeper, nails, -	0 42
12,	Do.	Adam Fink, work, -	5 20
13,	Do.	Geo. Fink, ditto, -	2 75
16,	Do.	John Knipe, carpenter work, -	3 25
	Do.	Adam Fink, carpenter work, -	2 60
20,	Do.	Day-book and ledger for estate,	2 00
	Do.	Geo. Fink, work, -	1 30
21,	Do.	F. Offerman, shaving dec'd, -	2 00
	Do.	Messrs. Bruner, -	35 00
	Do.	L. Fizzoon, work, -	18 74
	Do.	Adam Fink, do. -	5 85
	Do.	Geo. Fink, do. -	2 60
27,	Do.	Wm. Sprigg, wages, -	12 00
Sept. 4,	Do.	L. Fizzoon, do. -	7 15
6 & 11,	Do.	Adam Fink, do. -	6 76
8,	Do.	Geo. Fink, do. -	4 80
14,	Do.	Mrs. Patterson, spinning, -	54 50
	Do.	Adam Fink, goods, -	22 50
	Do.	Geo. Fink, work, -	1 30
	Do.	L. Fizzoon, stockings, -	12 75
16,	Do.	Messrs. Bruner, wool, -	99 82
	Do.	Geo. Wilson, use of fulling mill,	3 00
17,	Do.	Peter Grim, bricks, &c. furnished dec'd, -	106 95
	Do.	Paul, Williams, & Co. lumber do.	121 04
18,	Do.	Adam Fink, work, -	5 20
	Do.	L. Fizzoon, do. -	8 45
21,	Do.	Adam Fink, do. -	5 83
23,	Do.	Geo. Fink, do. -	2 60
25,	Do.	L. Fizzoon, do. -	3 25
27,	Do.	Wm. Spriggs, wages, -	16 00

		Do.	Adam Fink, work,	-	-	5 86
		Do.	Geo. Fink, do.	-	-	1 70
Oct. 2,		Do.	L. Fizzoon, do.	-	-	1 09
5,		Do.	Mrs. Fleckenstein, wool & spinning,			1 55
6,		Do.	Adam Fink, work,	-	-	7 03
7,		Do.	Geo. Fink, do.	-	-	1 30
9,		Do.	Danl. Eisen, soft soap,	-	-	3 75
		Do.	Geo. Fink, commissions for selling stockings,	-	-	0 66 $\frac{1}{2}$
		Do.	L. Fizzoon, work,	-	-	3 25
13 & 26,		Do.	Adam Fink, work,	-	-	9 10
13 & 26,		Do.	L. Fizzoon, work,	-	-	6 84 $\frac{1}{2}$
		Do.	Geo. Fink, commissions on selling stockings,	-	-	1 74
		Do.	G. Fink, work,	-	-	3 18
30,		Do.	L. Fizzoon, commissions on selling stockings,	-	-	1 64 $\frac{1}{2}$
Nov. 1 to 10,		Do.	G. Hawk, work,	-	-	4 20
		Do.	G. Fink, commissions,	-	-	0 86
3 to 6,		Do.	Mrs. Fleckenstein, spinning wool,			1 60
		Do.	Wm. Gilbert, interest on mortgage,			11 62 $\frac{1}{2}$
11,		Do.	Taxes on real estate,	-	-	17 55
		Do.	Mr. Day, taxes on do.	-	-	15 03
16,		Do.	L. Fizzoon, work,	-	-	1 64
19,		Do.	Geo. Fink, commissions,	-	-	0 51 $\frac{1}{2}$
		Do.	Geo. Hawk, work,	-	-	2 00
		Do.	R. Cramer, mortgage and interest,			258 75
23,		Do.	Mrs. Fleckenstein, spinning,	-	-	0 87 $\frac{1}{2}$
26,		Do.	Wm. Spriggs, wages,	-	-	33 00
		Do.	L. Fizzoon, stockings,	-	-	6 12 $\frac{1}{2}$
27,		Do.	G. Wilson, use of fulling mill,	-	-	3 00
Dec. 1,		Do.	Mrs. Patterson, spinning,	-	-	29 85
		Do.	L. Fizzoon, commissions on selling,	-	-	0 47
3,		Do.	G. Hawk, work,	-	-	1 80
7,		Do.	G. Hawk, do.	-	-	1 80
		Do.	Messrs. Bruner, wool,	-	-	76 00
		Do.	Repairs on real estate,	-	-	1 47 $\frac{1}{2}$
17,		Do.	Mrs. Fleckenstein, interest on note,			4 00
30,		Do.	Turner Camac, ground rent,	-	-	40 87 $\frac{1}{2}$
1825						
Feb. 8,		Do.	G. Hawk, work,	-	-	1 20
		Do.	Mrs. Fleckenstein, spinning,	-	-	0 83
		Do.	For deceased's grave,	-	-	0 75
		Do.	Sewing 4 doz. 3 pair stockings,	-	-	1 88
		Do.	Cleaning a room,	-	-	1 50
		Do.	Commissions on sale of stockings,			0 92
		Do.	G. Hawk, work,	-	-	1 80
		Do.	Mrs. Kuhn, interest and principal of note,	-	-	59 00
15,		Do.	L. Schnaible, portage,	-	-	5 00
17,		Do.	Headstone for deceased's grave,			4 36

May 20,	Do.	Wm. Gilbert, 6 months interest,	15 00
July 14,	Do.	Building a shop, - - -	48 50
	Do.	Water tax, - - -	5 00
27,	Do.	Mrs. Kuhn, interest, - - -	42 00
Aug. 1,	Do.	E. Krail, do. - - -	18 00
	Do.	Taxes on North Alley, - - -	17 42
Oct. 28,	Do.	T. Camac, ground rent, - - -	40 87 $\frac{1}{2}$
Nov. 21,	Do.	Wm. Gilbert, interest, - - -	15 00
Dec. 9,	Do.	2 years ground rent in N. Alley,	17 32
24,	Do.	Taxes Kensington, - - -	13 65
1826			
Jan. 8,	Do.	Cath. Crail, per will, - - -	100 00
26,	Do.	Mrs. Fleckenstein, interest, - - -	4 00
28,	Do.	T. Camac, $\frac{1}{2}$ year's ground rent, - - -	20 44
March 3	Do.	Water rent, - - -	5 00
May 18,	Do.	Wm. Gilbert, interest, - - -	15 00
July 21,	Do.	T. Camac, $\frac{1}{2}$ year's ground rent, - - -	20 44
28,	Do.	Mr. Kuhn, interest, - - -	39 00
Aug. 7,	Do.	E. Krail, do. on \$300 loaned to deceased, - - -	18 00
	Do.	Paper hanging on N. Alley estate, - - -	5 00
30,	Do.	Taxes on the same, - - -	16 00
Nov. 18,	Do.	Wm. Gilbert, $\frac{1}{2}$ year's interest, - - -	15 00
30,	Do.	Mrs. Fleckenstein, do. - - -	4 00
Dec. 8,	Do.	Window glass for N. Alley estate, - - -	2 00
12,	Do.	Ground rent on same, - - -	8 91
1827			
Jan. 7,	Do.	T. Camac, $\frac{1}{2}$ year's ground rent, - - -	20 44
Feb. 13,	Do.	Taxes to Mr. Day, - - -	16 15
	Do.	Repairing hydrant and permit, - - -	2 02
	Do.	Water rent, - - -	5 00
Credit claimed for Lawrence Schnaibly's bond and mortgage, dated July 6, 1816, his property having been sold at suit of T. Camac, for ground rent due him, and nothing being left to discharge any part of said bond &c. - - - - -		950 00	
Credit claimed by loss from sale of furniture of deceased, under the appraisement, - - - - -		10 00	
Credit claimed for 3 dozen stocking boards appraised by mistake, being owned by Adam Fink, - - -		9 00	
Credit claimed for stock damaged and useless through moths, and now on hand, - - - - -		51 50	
Cash paid Register for examining and passing this account, and fees of Clerk of Orphans' Court, - -		11 50	
Balance due the estate, to be distributed as the law directs, - - - - -		529 22	

Petition of Emanuel Krail, filed 20th July, 1827, setting forth:

That he has made a final settlement of his "Administration Account," which has been confirmed.

That there is a balance of \$1666 66 due from the estate, and no suff. assets.

Prays That the court will order three three story bricks, and one two story frame, on the same lot, opposite Third street and Germantown road, subject to a ground rent of \$20 20-100, and one two storied frame on the east side of Germantown road, above Master street, subject to a ground rent of \$20 20-100, and a three story brick in North alley, subject to a ground rent of \$12 25-100, to be sold to pay said debts. (No description filed.)

Schedule to Petition.

To Elizabeth Kuhn, bond and warrant, dated 19th July, 1821, for	\$550 00
Two promissory notes, 1st dated February 4th, 1823, for \$100; and the 2d August 8th, 1823, for \$150,	250 00
Wm. Gilbert, bond and mortgage,	500 00
Samuel Fleckenstein, bond,	66 66
Emanuel Krail, promissory note,	300 00
	<hr/>
	\$1666 66

Affidavit annexed sets forth:

That the above schedule is true, full, and just.

That the reason of the balance appearing in his account due by him to the said estate, is from the fact of his having charged himself with the debts due the estate by his co-executors, Adam and Jacob Fink, on account of rent, and of stock and provisions taken at appraisement.

That his said co-executors owe rent to the amount of \$300, part of said balance.

That deponent has not of said estate more than about \$30.

Nov. 3, No. 1, 1827.

Ordered to sell so much real estate as necessary to pay debts, according to petition.

Nov. 10, No. 10, 1827.

Leave granted, and amended description filed.

Mem.—Said description is a printed advertisement of the sale, without date.

Nov. 16, No. 49, 1827.

Certificate of Oakford, (Jno.) that court ordered said sale sufficient to pay debts, and to be sold in manner and form of law, and the rules of this court.

Said printed advertisement or handbill attached.

Also, report of sale by the executor, stating that having given due public and timely notice of the time and place of sale, by handbills and four daily newspapers, did sell at public vendue,

to Saml. W. Thackara, for \$2200, he being the highest and best bidder, prays the sale to be confirmed.

Affidavit annexed that the above facts are true, &c.

Indorsement on above certificate.

O. C. Nov. 16, 1827.

Sale confirmed—security ordered in \$3000, and John B. Kreymborg approved as security.—See book N. R., vol. 1, page 32.

(SECOND ACCOUNT.)

Emanuel Krail, acting executor of the last will of Jacob Fink, dec'd, in account with the Estate of the deceased, (filed with Register May 28, 1831.)

DR.

1827	To	balance remaining in hand from 1st account settled before the Register,	-	\$44 00
March 8,	Received from tenant in N. Alley, J. Fairbanks for 1 quarter's rent,	-	47 50	
June 5,	Do. do. do.	-	47 50	
Sept. 8,	Do. do. do.	-	47 50	
Dec. 12,	Do. proceeds of sale by order of O. C. for payment of debts,	- - -	2200 00	
1828				
Jan. 8,	Do. from tenant of house in N. Alley, on acc. of qr's rent due 8 Dec. 27,		40 00	
May 18,	Do. do. do. for 1 qr's rent and bal. due of last,	-	55 00	
July 22,	Do. do. do.	-	47 50	
Dec. 1,	Do. do. do.	-	47 50	
1829				
Mar. 28,	Do. do. do.	-	95 00	
Oct. 8,	Do. do. do.	-	95 00	
1830				
Jan. 1,	Do. do. rent up to Dec. 1, 1829,		43 75	
April 16,	Do. do. from Wm. Warren, from Jan. 4 to April 16, 1830,	-	51 00	
Aug. 25,	Do. James Lane, next tenant, from April 20 to Aug. 20, 1830,	-	60 00	
Sep. 2,	Do. from frame in Kensington,		15 00	
Dec. 20,	Do. house in N. Alley, 4 mo's rent from James Lane,	- - -	60 00	
	Do. from house in Kensington on account,	- - -	5 00	
April 7,	Do. house in N. Alley, 3 mo's rent from Jas. Lane, due March 28,		45 00	
	Do. frame in Kensington, on acc't,		2 50	
				3048 75

		CR.	
1827			
July 29,	By Cash paid T. Camac, ground rent on 2 lots, - - -	20 44	
Aug. 1,	Do. self 1 yr's int. on bond of \$300 by dec. due Aug. 1st, - -	18 00	
Oct. 11,	Do. taxes on N. Alley property No. 26	18 59	
	Do. for repairing do. -	9 80	
Dec. 10,	Do. bonds and notes with int. held by Eliz. Kuhns, adm'r from dec'd bond held by Wm. Gilbert, from dec'd, with a mortgage, - -	871 74	
	Do. self money lent dec'd, with int.	517 60	
	Do. self for commissions on personal estate for 1st acct. - -	306 50	
	Do. self do. 3 per cent. on sale of real estate, - - -	100 00	
		66 00	
1828			
Jan. 8,	Do. F. J. Troubat, for services ren- dered estate, - -	100 00	
15,	Do. water rent of house in N. Alley,	5 00	
	Do. ground rent in N. 3rd street,	10 44	
24,	Do. 5 mo's of lot on Germantown road	8 35	
Mar. 19,	Do. ground rent property in N. Alley	8 43	
April	Do. advertising sale of real estate,	3 00	
July 22,	Do. repairing hydrant in N. Alley,	8 00	
Sept. 4,	Do. introducing water in cellar of do.	10 87	
1829	Do. taxes in N. Alley, - - -	16 32	
Jan. 23,	Do. ground rent of property in N. Alley, - - -	12 25	
26,	Do. water rent of do. -	5 00	
Mar. 3,	Do. taxes of N. 3rd st. property,	3 45	
June 12,	Do. setting curbstones in N. Alley,	1 59	
	Do. new brick, sand, & laying them,	10 00	
Oct. 16,	Do. taxes of N. Alley property for 1829, - - -	19 32	
Dec. 23,	Do. ground rent on do. -	12 25	
1830			
Jan. 15,	Do. water tax on do. and cleaning privy in do. -	37 00	
1828			
Jan. 17,	Do. Fleckenstein, principal and inter- est on bond for £26 10, -	70 67	
1829			
Jan. 25,	Do. taxes on property in N. 3rd st. for 1829, - - -	3 06	
	Do. two years' ground rent on do. Wm. M. Camac, - -	41 75	
17,	Do. erecting fence on side of do.	7 37	
June 12,	Do. repairing house on said lot, -	17 00	
July 3,	Do. glazing do. - -	2 70	

12,	Do.	$\frac{1}{2}$ year's ground rent on	do.	10 43 $\frac{3}{4}$
Sept. 2,	Do.	hogshead for privy of house in		
		Kensington, - - -		0 87 $\frac{1}{2}$
15,	Do.	taxes on property in N. Alley,		18 25
Oct. 18,	Qo.	do. do. in Kensington,		3 85
Dec. 24,	Do.	1 year's ground rent of N. Alley		
		property, - - -		12 25
1831				
Jan. 14,	Do.	half year do. in N. 3rd st.		10 43
Feb. 10,	Do.	paving in front of do.		6 48
1827				
Dec. 14,	Do.	costs & charges Cl'k of O. C. on		
		sale of real estate, - - -		38 67
	Do.	Register on settling acct. (25 cts.		
		to Ald'n,) - - -		12 75
				2456 48
		Paid Register May 28, 1831,		9 61
				2466 17
		Balance due estate, - - -		601 95

(Filed in the Register's Office, May 28, 1831,
Confirmed Nisi July 1831.)

(THIRD ACCOUNT.)

(Filed 1833, and confirmed Nisi April 1833.)

1831	DR.			
May 28,	To cash balance in hand last account,	-	\$601	00
June 20,	Do. $\frac{1}{4}$ rent N. Alley, - - -	-	45	00
Oct. 25,	Do. $\frac{1}{4}$ frame Kensington, - - -	-	7	50
Dec. 22,	Do. N. Alley, - - -	-	45	00
1832				
Jan. 18,	Do. frame, - - -	-	7	50
Feb. 18,	Do. do. - - -	-	7	50
Mar. 22,	Do. N. Alley, - - -	-	45	00
Apr. 18,	Do. frame, - - -	-	7	50
June 22,	Do. N. Alley, - - -	-	45	00
Sept. 22,	Do. do. - - -	-	45	00
Oct. 18,	Do. frame, - - -	-	7	50
20,	Do. do. - - -	-	7	50
1833				
Jan. 8,	Do. N. Alley, - - -	-	45	00
Mar. 16,	Do. frame, - - -	-	5	00
Apr. 2,	Do. do. - - -	-	10	00
	Do. N. Alley, - - -	-	45	00
				976 00
Apr. 17,	Bal. - - -	-	627	54

1831	CR.	
May 28,	By cash commissions on \$848, collected between 1st and 2nd acct. and not charged in 2nd acct. 5 per ct.	42 48
	Do. water rent for 1831 in N. Alley house	5 00
	Do. Register settling 2nd acct.	9 69
July 13,	Do. ground rent in Kensington,	10 43 $\frac{3}{4}$
Aug. 1,	Do. lock and key for do.	1 62 $\frac{1}{2}$
17,	Do. carpenter work in N. Alley,	3 50
26,	Do. Margaret Sherly, testator's granddaughter,	20 07
Sept. 1,	Do. taxes in N. Alley,	18 63
14,	Do. repairs in Kensington,	0 50
Oct. 18,	Do. taxes on do.	4 52
Nov. 9,	Do. new cellar wall,	11 00
Dec. 23,	Do. ground rent in N. Alley,	12 25
1832		
Jan. 12,	Do. do. in Kensington,	10 43 $\frac{3}{4}$
Apr. 2,	Do. cleaning privy N. Alley,	27 62 $\frac{1}{2}$
11,	Do. brick work do.	1 00
May 5,	Do. new spout for do.	4 18
15,	Do. new cellar door Kensington,	5 85
23,	Do. water rent for 1832 N. A.	5 00
June 29,	Do. fence in N. Alley,	11 44
July 6,	Do. do. Wm. P. Harris do.	2 75
14,	Do. ground rent Kensington,	10 44
Sept. 11,	Do. poor tax N. Al.	4 25
Oct. 10,	Do. city & county do.	18 13
Nov. 9,	Do. glazing Kensington,	0 57
14,	Do. taxes do.	4 32
Dec. 19,	Do. ground rent N. Al.	12 25
1833		
Jan. 16,	Do. do. in Kensington,	10 44
Apr. 2,	Do. water rent N. Al.	5 00
17,	Do. F. J. Troubat, professional for settling 1st acct.	60 00
	Do. cost paid him for copy of acct.	1 37 $\frac{1}{2}$
	Do. commission to self on \$375 received since 2nd acct.	18 75
		378 56
	Bal.	627 54
		976 00

(FOURTH ACCOUNT.)

DR.—E. Krail, &c.

1833		
Apr. 17,	Do. Balance on acct. No. 3,	627 54
2,	Do. rent in Kensington,	5 00
July 25,	Do. do. do.	5 00
	Do. N. Al. do.	45 00
Aug. 2,	Kensington do.	5 00

Sept. 20,	Do.	N. Al.	do.	-	-	45 00
Oct. 18,	Do.	Kensington,	-	-	-	7 50
1834						
Mar. 5,	Do.	N. Al. 2 $\frac{1}{4}$	-	-	-	90 00
June 22,	Do.	do. do.	-	-	-	45 00
1835						
June 22,	Do.	do. 1 year,	-	-	-	180 00
Oct. 1,	Do.	purchase money,	-	-	-	2825 00
	Do.	rent of do. due 22 Sept.	-	-	-	45 00
1836						
Aug. 19,	Do.	price of Ken'n,	-	-	-	825 00
						4750 04

23, Balance due estate, - - - 4042 89

Interest on the sum of \$2800 at 6 per cent. invested on the —

to be calculated to the time of distribution. The \$825 is invested in stock of the Girard Bank.

The commission is upon the sum of \$4122 50, which is the above sum of \$4750 04 less the 1st item \$627 54.

1833		CR.				
June 24,	By cash paid bricklaying N. Al.	-	-	-	-	5 75
July 27,	Do. ground rent Kensington,	-	-	-	-	10 43
Aug. 2,	Do. painting N. Al.	-	-	-	-	36 00
	Do. spout for do.	-	-	-	-	7 00
	Do. taxes for do.	-	-	-	-	11 75
Sept. 10,	Do. Kensington for 1833,	-	-	-	-	6 76
June 15,	Do. repair of hydrant N. Al.	-	-	-	-	0 75
Oct. 17,	Do. taxes do.	-	-	-	-	7 38
Dec. 23,	Do. ground rent do. for 1833,	-	-	-	-	12 25
1834						
Jan. 29,	Do. paving Germantown road,	-	-	-	-	60 94
Apr. 9,	Do. water rent N. Al.	-	-	-	-	5 00
July 8,	Do. filling up lot in Kensington,	-	-	-	-	18 00
Aug. 16,	Do. city & poor tax & co'n,	-	-	-	-	21 13
	Do. plumber's bill, tenant N. Al.	-	-	-	-	0 75
12,	Do. materials for paving Kensington,	-	-	-	-	21 46
Oct. 9,	Do. pipe in cellar,	-	-	-	-	1 50
17,	Do. ground rent Kensington, 1 year,	-	-	-	-	20 87
Dec. 1,	Do. 1 year do. in N. Al.	-	-	-	-	12 25
3,	Do. taxes of 1834, Kensington,	-	-	-	-	6 76
1835						
Apr. 11,	Do. water rent in N. Al.	-	-	-	-	5 00
	Do. ground rent Kensington,	-	-	-	-	10 44
13,	Do. repairing pavement N. Al.	-	-	-	-	2 27
July 31,	Do. tinwork N. Alley estate,	-	-	-	-	8 40
Aug. 10,	Do. ground rent Kensington estate,	-	-	-	-	10 44

Oct. 13,	Do.	county tax N. Alley, - - -	9 40
Oct. 1,	Do.	recording & acknowledging deeds of estate, - - -	9 59
6,	Do.	ground rent of N. Al. - - -	12 25
7,	Do.	taxes of Kensington, - - -	5 45
12,	Do.	T. W. L. Freeman, public sale of real estate, - - -	25 00
13,	Do.	taxes city & poor N. Al. - -	14 98
14,	Do.	F. J. Troubat, professional services	50 00
1836			
Aug. 4,	Do.	ground rent Kensington, 1 year,	20 87 1/2
15,	Do.	iron pipes in front of Kensington estate, - - -	21 40
	Do.	T. W. L. Freeman, for public sale of do. - - -	15 00
	Do.	acknowledgment of deed in default of purchase, - - -	0 75
23,	Do.	E. Kral commissions on \$4122 50 at 5 per ct. - - -	206 12
	Do.	Register's fees & fees of Orphans' Court, - - -	11 15
		Balance due estate, - - -	4042 89
			4750 04

(Filed in Register's office, Aug. 24, 1836, confirmed Nisi.)

(FIFTH ACCOUNT.)

(Filed in Register's Office, Feb. 27, 1845.)

1836	DR.		
	To balance as per last settlement, - - -	\$4042 89	
	Interest on Girard Bank stock from Nov. 18, 1837, to Nov. 18, 1840, - - -	143 00	
	Interest on Southern Insurance and Trust Company stock, from July 1837 to Jan. 1845, - - -	332 47	
	Interest on balance of \$3620 70 less \$1750 invested in stocks, from 1 Dec, 1836 to 1 March, 1845, - - -	925 99	
		5835 13	

1836			
Dec. 3,	By cash paid to the heirs, as per receipts and release, - - -	\$392 89	
	cash paid F. J. Troubat, Esq. - - -	17 20	
		409 09	
	do. repairs, - - -	5 17	
	do. Macauley, for advice, - - -	5 00	
	do. Al'n fees, suit v Troubat, - - -	1 93	
	do. this sum invested under the will in stock of Girard Bank, 13 shares at 59 50, - - -	775 00	

do.	do.	35 shares Southwark Trust and Insurance Company, -	975 00
do.	paid George Fink, Margaret Ku- cher, Catherine Carter, children ren of Adam Fink, deceased, in- terest at various times, as also paid Adam, in his lifetime, -	269 90	
do.	paid George Fink, interest do.	270 00	
do.	paid Jacob Fink, do. -	255 00	
do.	paid Elizabeth Schnable's children	255 00	
do.	Catherine Krail and children, -	270 00	
do.	paid James Page, counsel fee for advice in regard to trust, -	25 00	
do.	commissions on \$1401 46 at 6 per ct. - - - -	84 08	
do.	cash paid Register's fees for exam- ining and passing this acct. -	9 69	

Sworn before Robert F. Christie, 27 Feb. 45,
and filed on that date.

	3610 86
775	
975	1750
	1860 86

May 16, 1845.—Accounts referred to W. A. Porter, Esq. as Auditor, to adjust and settle.

June 20, 1845.—Petition of R. Carter and others filed, praying that the appointment of J. A. Phillips, Esq., made 21 Oct. 1836, as auditor, be vacated, and to refer all the accounts to an auditor, and that the entry be made *nunc pro tunc*. Order of Court accordingly, indorsed on the petition.

*Exceptions to the Accounts of Emanuel Krail, as acting executor of
the last will and testament of Jacob Fink, deceased,
(there being only three of said accounts found.)*

1.—That said accountant has credited himself with the payment of many debts and sums which the said testator never owed, viz, the following amounts of debts and charges in his first account.

Error in the addition of the Dr. side of said account,	\$10 00
All charges (in the Cr. side of said account,) of mo- ney paid for work, amounting to - - -	209 00
All charges therein for money paid for yarn, - -	7 86
Do. do. do. tailor's bill, 12 62	
Do. do. do. spinning, 189 00	
Do. do. do. wool, -	276 00
Catherine Woolbert, (for attending funeral \$9 75)	
deduct - - - - -	5 00

Jacob Fink, for bread delivered and furniture per appraisement, - - - -	69 60
Emanuel Krail, on account of money borrowed, furniture per appraisement, - - - -	54 25
Physician for attending on deceased, - - - -	4 50
Minister, attending funeral, - - - -	6 00
Adam Fink, carpenter work, - - - -	2 60
F. Offerman, (for shaving deceased \$2,) deduct	1 00
Messrs. Brown, (Bruno,) - - - -	35 00
Wm. Sprigg, wages (at three different times,) - -	61 00
Adam Fink, goods, - - - -	22 50
L. Fizzoon, stockings, - - - -	12 75
George Wilson, use of fulling mill, (at two different times,) - - - -	6 00
Paul, Williams & Co. lumber furnished to deceased, -	121 04
Daniel Eisen, soft soap, - - - -	3 75
Taxes on real estate, - - - -	17 55
Mr. Day, taxes do. - - - -	15 03
L. Fizzoon, stockings, - - - -	6 12 $\frac{1}{2}$
Mrs. Kuhn, interest and principal of note, - -	59 00
L. Schnable, portage, - - - -	5 00
Building shop, - - - -	48 50
E. Krail, interest, - - - -	18 00
Stock injured by moths and now on hand, - -	59 50
E. Krail, interest on \$300 bond to deceased, - -	18 00
Real estate undersold by collusion and unfaithfulness of the accountant (see next account,) - -	1000 00
	2906 17 $\frac{1}{2}$

2.—That on the Dr. side of the said accountant's second account, the balance (if the sale of the real estate was lawful and real,) is, to the amount of the above aggregate of \$2096 17 $\frac{1}{2}$, together with interest therefor, less than it ought to be. Interest on the above aggregate for 17 years and 9 months, the accountant having appropriated it to his own use, - - - -

3075 06

3.—That in the Cr. side of his second account, the said accountant has improperly inserted the following items, which the testator did not owe, viz:

By one year's interest on bond of \$300 by deceased due 1 Aug. - - - - -	18 00
do. cash for repairing N. Alley, - - - -	9 80
do. self money lent deceased, with interest, - -	306 50
do. self for commissions on personal estate for 1st account, - - - - -	100 00
do. self do. 3 per cent. on sale of real estate, -	66 00
do. F. J. Troubat, (for services rendered estate, \$100) deduct - - - - -	50 00
do. repairing hydrant in N. Alley, - - - -	8 00
do. introducing water into cellar of do. - - - -	10 87

do. erecting fence on side of property in N. Third street,	7 37
do. repairing house on said lot,	17 00
do. glazing do.	2 70
1827, Dec. 14, by costs and charges Clerk O. Court on sale of real estate,	38 67
do. do. register on settling account (25 cts. to Ald'n)	12 75
4.—That the balance on the Dr. side of the said accountant's account (filed in the Register's Office, Feb. 27, 1845,) is less than it should be by the sum of \$6628 89, and interest for that sum since he appropriated it to his own use, as per exceptions herein before to his first and second accounts,	6628 89
5.—That the investments in Stocks, mentioned on the Dr. side of the account last aforesaid, were not made in good faith for the benefit of the estate, or authorised by the will or by said court, and that he shonld have accounted for the principal sums with 6 per centum per annum of interest thereon.	
6.—That the interest charged in the Dr. side of the last aforesaid account is \$1124 less than it should have been on the sums stated in it, and the estate and its proceeds mixed.	
7.—That on the Cr. side of the last aforesaid account, the following credits are improperly claimed by said accountant, viz:	
By cash paid the heirs as per receipt and release, the furniture taken by the said heirs, and the rent charged in his second account aforesaid, as due by his co-executors, being included in this item,	392 87
do. cash paid F. J. Troubat, esq.	17 20
do. Macauley, for advice,	5 00
do. Ald'n fees, suit against Mr. Troubat,	1 93
do. sum invested in Girard Bank stock, not being made in good faith, or authorised by the will or court,	775 00
do. do. 35 shares Southwark Trust and Insurance Co. do.	975 00
do. do. paid James Page, counsel fee for advice in regard to the trust,	25 00
do. commissions (charged previously and the trust not being faithfully or judiciously executed,) -	84 08
The said items being unauthorised, unnecessary, and in fraud of the trust, instead of benefiting it, and being not intended for any benefit except to himself.	
8.—That said accountant, (in his account last filed,) failed to account for the rents of the decedent's real estate which was not sold by order of the Orphans' Court, though he acted as lessor thereof, prout his	

prior accounts. (N. B.—*The 3d and 4th accounts could not be found in the office when these exceptions were filed.*)

- 9.—That there was no good reason for selling the real estate, and that he procured the order for such sale by exhibiting an erroneous account to said court.
- 10.—That the real estate sold by said order of the Orphans' Court, was purchased at the sale by the accountant himself or for his benefit, contrary to the duties of an executor or trustee, bought it under value and made thereby a profit of \$1500, not accounted for.

(Filed May 3d, 1845, on behalf of Richard Carter and Wife, Jacob Fink, (son of Adam, dec'd,) Margaret Kucher, and George Fink.)

Exceptions filed on behalf of Minor Grand-children of Testator, June 28, 1845, by Wm. Wilkinson, Esq. attorney of Jacob Fink, their father and guardian.

- 1.—That the executor continued the business after the decease of the testator, without any authority under the will, whereby large sums of money were expended belonging to the estate, and for which no account of proceeds is accounted for by the executor.
- 2.—To all charges for interest said to have been paid by executor, inasmuch as he alleges, that after the first sale of the real estate of the decedent, the executor had ample funds to have paid and satisfied the testator's debts and legacies.
- 3.—That executor has not fully accounted for the rents of testator's property in the District of Kensington, which he received or ought to have received therefrom.
- 4.—That executor has not fully accounted for the rents of the property in North Third Street, and in North Alley, which he received or ought to have received therefrom.
- 5.—That executor did not use due diligence in the collection of a certain bond of Lawrence Schnaibly in favor of the testator, whereby the same still remains unpaid, and which executor claims credit for as a total loss.
- 6.—To the sale of the Third Street and North Alley properties, they having been sold contrary to the express provisions of testator's will, and not for the payment of debts, legacies, or responsibilities of deceased.
- 7.—To the investment of the funds of the estate in Girard Bank stock and the stock of the Southern Trust and Insurance Company. 1st—that the executor was not authorised so to do, as trustee under the testator's last will and testament. 2d—that said stock was purchased in his own name, and not as trustee, and was not transferred on the books of the said institutions to the use of the cestui que trust until after the same become almost valueless, to wit, on the 19th day of February, 1845.
- 7.—To the erection or building of a shop.
- 8.—Asks for general vouchers for accounts paid by executor, particularly to Elizabeth Kuhn \$871 74, William Gilbert \$517 60, and himself (executor) \$306 56.

- 9.—To counsel fees paid to F. J. Troubat, esq., to wit, \$227 50.
- 10.—To the charge for commissions.
- 11.—To all other matters and things arising from or growing out of the aforesaid exceptions.

To the Honorable the Judges of the Orphans' Court for the County of Philadelphia.

The Auditor appointed by the said Court, to audit, settle and adjust the Accounts of Emanuel Krail, acting executor of Jacob Fink, deceased, [see paper A] respectfully reports:

That he gave public notice of the time and place of meeting, by an advertisement inserted twice successively in the Legal Intelligencer and every other day five times in the American Sentinel, a daily newspaper published in the City of Philadelphia, [see copy of advertisement marked B] and that at the time appointed, as well as at the several times to which his meetings were adjourned, between the 10th day of June and the 10th day of September, 1845, he proceeded to discharge the duties of his appointment.

At the several meetings your Auditor was attended by James Page, esq., the counsel of the accountant, by W. Wilkinson, esq., who represented Jacob Fink, and by Daniel McLaughlin, esq., who represented George Fink.

After reviewing the items of the last account filed, a question was raised, which is discussed and decided by the auditor in the following opinion.

Fink's Estate—Opinion of the Auditor, delivered 10th September, 1845.

"An application is made to the Auditor by the counsel of the minor children of Jacob Fink, and others, to enter upon an examination of all the accounts filed by the executor of this estate. This is resisted by the counsel of the executor, who insists that the examination shall be confined entirely to the last account, to wit, that of the 27th Feb. 1845.

A brief history of the affairs of the estate, seems necessary to a proper determination of this question. On the 15th day of May, 1824, Jacob Fink, made his last will and testament in writing, which was duly proven on the 7th day of July, 1824. The principal directions contained in the will in regard to the distribution of the testator's property, may be summed up as follows: After the usual provisions in regard to his debts, a specific bequest to his daughter Catherine, and certain directions respecting his personal estate, he in substance orders and directs, that the annual income of his estate real, personal and mixed, be divided into five parts, one fifth part thereof to go to each of his children, Adam, George, Catherine, and Jacob, and the remaining one fifth part to the children of his deceased daughter, Elizabeth, in equal and just proportions. So far the construction of this instrument is free from difficulty.

The testator then proceeds to direct, that after the decease of his aforesaid children, the one fifth part of the said annual income before bequeathed to each child, shall go to and be enjoyed by the lawful children of such child, share and share alike. Particular directions

are given for the distribution of his estate among his said grand-children, when the event shall have happened on which their enjoyment of it depends, to wit, the decease of their respective parents. A provision is then made for the sale of his real estate, under certain circumstances, and the will closes with a nomination of executors.

Emanuel Krail is the only one of the executors therein named, who appears to have acted. He has filed in all four accounts. On the 21st day of November, 1836, after an auditor had been appointed on the then & preceding accounts, to which numerous exceptions had been taken, a release was executed to Mr. Krail, as executor, by three of the children of the testator, and the guardian of the children of his deceased daughter Elizabeth, whereby, in consideration of the said executor dividing with the other executors the sum claimed by him as commissions, the parties therein named agree to withdraw the exceptions filed to the accounts, and stipulate that the said accounts shall be confirmed by the court without further delay. Those accounts were afterwards so confirmed. It is not disputed, that this release is in proper form, and that it is binding on the actual parties to it. But it is denied, that it is binding upon the children of Jacob Fink, and others, who are the grand-children mentioned in the will, among whom the annual income of the estate is to be divided on the decease of their parents. These children of Jacob Fink, it is urged were at the time of the execution of the release, and still are minors, and had no guardian to act for them, until the appointment made by the court on the 28th June, 1845.

Without noticing the additional question raised by the counsel for the grand-children, under the authority of Magrew's appeal, 14 S. & R. 396, and Walker's case, 3 Rawle, 246, namely, how far they would be entitled to re-examine the accounts after their confirmation by the court, and after the period of time that has already elapsed, the auditor proceeds to dispose of the case on other grounds.

After a careful examination of the facts, the auditor has not been able to coincide in the view taken of the effect of the above mentioned release by the counsel of the grand children, but on the contrary is of opinion, that it does estop them so far as the present inquiry is concerned in contesting the items of these previous accounts. The principal reason on which this opinion is based, is, that the parties have no present interest in the estate. If they have any such, it can only be a joint one with their parents, an idea clearly negatived by the terms of the will, for it is there expressly provided, as we have seen, that the interest of these grand children shall commence only on the decease of their parents, the testator's children. As yet, the executor owes the grand children nothing; they have no claim upon him which would support any proceedings at law, a payment to them of the most inconsiderable sum out of the funds of this estate, would be a fraud upon their parents, and a receipt from them or their guardian to the executor, would avail him nothing. If an injury had been done to them in the management of this estate, it will be time enough to inquire into that and into the mode of redress, when they shall have been properly clothed with their rights.

It is true that a certificate from the court has been produced be-

fore the auditor, directing the examination and adjustment of all the accounts of the executor; but it is also true, as has been conceded, that the application for that order was made without notifying the executor, or affording him any opportunity to oppose it. It seems probable, under the circumstances, that if the court had possessed a full knowledge of the facts, the order might not have been made.

The decision of the auditor therefore is, that he can only examine the last account filed by the executor, and the matters directly relating thereto. If there be error in this course, it will not be difficult to cause the accounts to be recommitted to him for the correction of that error. If, on the other hand, he should proceed to such an examination as is desirable, a vast amount of labor might be caused to the executor, in searching for papers long deemed useless, and in procuring oral testimony as long forgotten, a labor that might terminate in a decision of the court pronouncing the whole investigation uncalled for. The present course has therefore appeared alike expedient and just."

The course indicated in this opinion was accordingly pursued by the auditor.

The next question raised, had respect to the following items in the credit side of the account of 18th April, 1845, to wit:

This sum invested under the will, in stock of the

Girard Bank, 13 shares, at \$59 50, - - - \$775 00

Thirty-nine shares Southwark Trust and Insurance

Company, - - - - - 975 00

The facts in regard to these transactions appeared to be, that the accountant had several years since, without the order of the court, invested the above sum in these stocks, in his own name, and that they had stood in his own name until the 19th of February, 1845, when they were transferred to him as executor. They are now worthless, and the question presented for the consideration of the auditor, was whether or not the accountant should be charged with the above amounts of money as cash.

On the authority of the Act of Assembly of 29th of March, 1832, Sec. 14, Title Orphans' Court, (Purdon's Dig. 810,) of 5 W. & S., 254—5 Johnson's Ch. 286—2 Maddchan 141—2 Kent's Com. 230—2 Story's Equity 1269—1 Cox 24—3 Swanson 84—Willeson on Trustees 183 (10 Law Lib. 86,)—Lewin on Trust. 308-9—(24 Law Lib. 156,) the auditor is of the opinion that he must be so charged. The authorities are imperative that the investments shall be made in certain particular modes, under the direction of the court. The accountant did not thus invest these moneys, and however honest his intention, has rendered himself liable for them.

The auditor allows an additional credit to the accountant of \$19 90, paid to the physician, (as per bill and receipt,) who attended Adam Fink in his last illness—no objection having been taken before the auditor to the allowance of the said credit.

At the last meeting several of the items set down in the credit side of the last account not before examined, were vouched, and found to be correct.

RECAPITULATION.

Allowing the additional credit above referred to, striking out of the credit side the sums of \$775 and 975 there set down, (making \$1750 in all,) and charging the accountant with interest upon the said sum of \$1750 as cash, from 1st December, 1836, to 1st March, 1845, and not with interest on the stock, it is found that there remained due to the estate at the time of filing the account, the sum of - - - - - \$3954 37

From this balance are to be deducted the following expenses incurred in auditing the account, to wit: Advertizing

Copy of Account,	- - - - -	\$4 00
Fee to James Page,	- - - - -	30 00
Fee to Wm. Wilkinson, esq.	\$30 00	48 00
and expenses of citation,	18 00	
Fee to Daniel McLaughlin, Esq.	-	30 00
Auditor's Fee,	- - - - -	60 00

180 62

\$3773 75

So that upon a full audit, settlement, and adjustment of the account, there remains in the hands of the accountant a balance of three thousand and seven hundred and seventy three dollars and 75-100 due to the estate.

All of which is respectfully submitted,

WM. A. PORTER, Auditor.

Philadelphia, September 17, 1845.

To the Honorable, the Judges of the Orphans' Court for the County of Philadelphia.

The auditor appointed to audit, settle, and adjust the accounts of Emanuel Krail, acting executor of the last will and testament of Jacob Fink, deceased, makes the following supplemental report:

That agreeably to the order of the Court, he entered upon a re-examination of said accounts, on the 4th day of November, 1845, and continued to examine and vouch the same at divers times, between that date and the 20th day of January, 1846, and that he was in general attended at his several meetings by the parties and counsel mentioned in his report of the 17th September, 1845.

By reference to paper hereto attached, marked A., containing Mr. McLaughlin's exceptions, it will be observed that the exceptions to the said accounts, embrace a list of items extending in amount from one dollar to the highest sum named in the accounts, and from the compensation paid for the testator's funeral sermon to the fee of the counsel who advised the executor. These accounts cover a period of time exceeding twenty-one years. They were passed by the register, and for many years believed by the party most interested, to be absolutely settled and disposed of by the release to which allusion is made in your auditor's first report. Under these circumstances, it was not in your auditor's opinion to be expected that the

accountant should employ that degree of care in the preservation of vouchers, and the recollection of facts which might otherwise have been demanded. Nor was it to be expected that at this distance of time, he should experience such facility in procuring testimony, written or oral, to support his official acts, as might have been required in reference to more recent transactions. In investigating the accounts, your auditor has been somewhat governed in his course by these considerations, and he may in this connection state, that with one exception, to be hereafter noticed, all the items excepted to, have, in his opinion, been sufficiently vouched and explained.

As it would be impossible within very reasonable limits, to speak of each of the disputed items separately, they may more readily be disposed of by some general statements. By the will of the testator, the annual income of his estate is substantially bequeathed to his children for life, and after their deaths, to his grand-children. By the execution of the release mentioned in the first report, the children are believed to be estopped from excepting to the accounts, and by consequence the grand-children are the only active parties and proper exceptants. Two questions therefore present themselves for determination.

1. Was any personal property left by the testator at his death, to be invested for the benefit of the grand-children, according to the directions of the will?

2. Did any thing accrue to the said grand-children from the sale of the testator's real estate?

1. By a careful calculation of the items in the credit side of the accounts, it will appear that the testator's debts amounted at his death, to the sum of \$2285 27. To pay these debts, the executor had personal assets, amounting to the following sums, to wit, \$1648 44, the amount of the inventory, and \$258 cash, received from Calender Irwin, (see debit side of first account,) making in all \$1906 44, from which it appears the testator's indebtedness at the time of his death, was considerable more than the amount of his personal assets, and consequently that the present exceptant could have taken nothing from that source.

2. In regard to the second question, your auditor submits the following table, which is the result of abstracts and calculations made from the several accounts.

Assets in the hands of executor,

Inv. and app.	\$1648 44
Cash from Irwin,	258 00
Real Estate sold,	2200 00
	4106 44

Specialty and other debts due by the testator
and paid by the executor, - - -

\$2285 27

Amount paid by the executor for work done
and expenses incurred, including com-
missions, - - - - -

1704 12

3989 39

Balance against executor, - - -

\$117 05

In these calculations, neither the expenses nor the rents and profits of the real estate are included, because the latter are given by the will to the children of the testator, who, for the reasons already stated, are not properly exceptants.

With the real estate subsequently sold, namely: one parcel for \$2825, and another for \$825, making in all \$3650, we have nothing more to do. This sum is included in the debit of \$4042 89, mentioned in the last account, and is there sufficiently accounted for.

Among the credits claimed for debts due by the testator, there is one of \$306 50-100 paid to E. Krail, this executor, of the date of 10th December, 1827. The executor exhibited before the auditor a receipt for the sum bearing the proper date, contained in a receipt book, among a series of other receipts. This same credit had been claimed before the settlement made with the children, at which the release was executed, and could not at that time have passed unnoticed by them or their counsel; but does not appear to have been objected to by any of the parties. Considering the pecuniary circumstances of the testator for many years previous to his death, it does not seem improbable that this money was advanced to him by the executor, according to the obligation of the latter. But no note, bill, or evidence of debt purporting to have been discharged by this credit, was produced before your auditor. And notwithstanding the lapse of time already adverted to, and the conclusion that might have been drawn by the executor after the settlement, that he was not required to preserve it longer, your auditor has believed himself compelled to disallow this credit, and has accordingly stricken it out, and charged interest against the accountant on that sum, making in all a difference of \$616 22.

A credit claimed for a sum of \$950, the amount of a bond and mortgage of Lewis Schnable, included in the inventory, and remaining in the hands of the executor unpaid, forms one of the largest items objected to. Mr. Schnable was the son-in-law of the testator. No interest was ever paid on the debt. In addition to this it was proved, that after the testator's death, a suit was brought for the arrears of ground rent, and the property mortgaged, sold for less than the incumbrances prior to this mortgage. Subsequent executions were returned nulla bona, and the auditor considered this sufficient proof of the insolvency of Schnable, and allowed the credit.

The auditor has refused to strike out credits for moneys paid to J. F. Troubat, Esq., for services and advice in regard to the estate, because these services were certainly necessary in procuring the several sales of real estate required to pay the debts, and in administering so complicated an estate; and because the moneys were honestly paid by the executor. At the time of the settlement with the children, the charges were not considered exorbitant or improper; and your auditor can see no reason why they should be so considered now.

At a certain stage of these investigations, the exceptants, through their counsel, offered to show, that a portion of the real estate sold for the payment of debts, under the order of the court, was purchased by Saml. W. Thackara for the executor, and afterwards conveyed

by Mr. Thackara to the latter, and that this sale was fraudulent and void. Upon this inquiry the auditor refused to enter, for the reasons, that it had no relation to these accounts, and was not embraced in the exceptions filed; that the testimony offered would not in any event have established the fact proposed to be established, and that if it had been sufficient, the proposition would have required him to decide the title to the said real estate, which was conceived to be beyond his official powers.

The commissions charged by the accountant, are considered by the auditor, just and proper.

This sufficiently disposes of all the exceptions to the accounts, concerning which any argument or evidence was offered before your auditor.

Adding to the balance struck in your Auditor's first

report, namely,	-	-	-	-	\$3773 75
The sum of	-	-	-	-	117 05

It is found that there remained due to the estate, at

the filing of the last account, the sum of	-	\$3890 80
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From this are to be deducted fees paid counsel attending this audit, and expenses of audit, amounting in all to	-	-	-	-	150 00
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\$3740 80

So that upon a full audit settlement and adjustment of the accounts, there remains in the hands of the accountant a balance of \$3740 80 due the estate.

All which is respectfully submitted.

WM. A. PORTER, Auditor.

Philada. March 6th, 1846.

*Estate of Jacob Fink, dec'd, audit of E. Krail's accounts as executor
Dec. 24, 1845.*

On behalf of my clients, I offer to prove frauds practised by the accountant upon the legatees of said testator, in the following manner.

1. That by misrepresentations in his petition and schedule, filed in the Orphans' Court, July 20th, 1827, representing the debts due from the testator's estate as being greater than they were and more than the assets in his hands, he procured on the third day of November, 1827, an order of said court for the sale of so much of the testator's real estate as would suffice to pay the debts exhibited in said schedule.

2. That on the 14th day of November aforesaid, he caused to be sold a much larger portion of said estate than would suffice to pay the debts exhibited in said schedule.

3. That through the agency of Samuel W. Thackara, he purchased for himself the estate so sold, at an inadequate price, and thereafter took its rents, received a conveyance thereof from Mr. Thackara, for the nominal price of one dollar, on the 24th day of March, 1828, and, after receiving the rents and selling off a frame building

for forty dollars to C. Collins, resold the premises to Jonathan Hunn on the 19th day of March, 1830, for \$3250, being a profit to himself of \$1050, besides the rents in the meantime and the price of said frame, which rents and profits he applied to his own use.

4. These facts I offer to prove by copies of the said petition, schedule, order and confirmation of said sale, (proved to be correct copies by the oath of the copier,) by the title deeds of said real estate, sold as aforesaid, and by the testimony of said Mr. Thackara, and other witnesses.

I also insist, that any release made by the said legatees or any of them, is no defence to the accountant, or bar to the exceptants, unless they knew his being the purchaser of the said real estate, and his making the above profits thereby; that the burthen of proving that knowledge on the part of the legatees lies on him; that George Fink is not bound by said release, because there is no consideration in it valuable to him, and being illiterate, and ignorant of its nature, he must have been misled by deception to execute it; that the rights of the testator's grand-children who were no parties to it, are not affected by said release.

As authorities for the said copies of records being evidence, I cite Starkie on Evidence, page 226; Welsh v. Crawford, 14 S. & R. 440; Stoever v. Lessee of Whitham, 6 Binn. 416; and Develin v. Williams, 9 Watts, 317.

As authorities for holding the accountant accountable for said profits, I cite Campbelle v. the Penna. Life Insurance Co. 2 Whart. 63; John Wallington's Estate, 1st Ashmead's Rep. 307.

Produced before me as Auditor in Fink's Estate, WM. A. P.

"In the Orphans' Court for Philadelphia County.

In the matters of the Auditor's Reports on the accounts of E. Kral, acting executor of the last will and testament of Jacob Fink, late of said county, deceased.

EXCEPTIONS.

1. That the Auditor erroneously reports, that exceptions were filed to some of the said accounts prior to the date of the alleged release, (mentioned in his report, November 21st, 1836,) that the same accounts were subsequently confirmed by said court, and that the validity of said release was not disputed before him, the facts being contrary to the report in said respects.

2. That the bill of the physician for attending Adam Fink in his last illness, \$19 50, was allowed the accountant, its allowance having been opposed by George Fink and several grand-children of the testator, exceptants, as not payable out of their estate.

3. That the total amount charged against the accountant at the end of the first report, is \$982 85 less than it should have been upon the auditor's own data.

4. That the supplemental report alleges (without proof or concession of the fact,) that the accountant believed his accounts filed prior to said alleged release, to be thereby "absolutely settled and disposed of," the accountant being (if thus ignorant,) inexcusable, as he had the benefit of counsels at great charge to the estate.

5. That the reports do not specify what credits or charges were vouched for before the auditor, or by what evidence, and that he allowed, as charges against the estate, all things except the investments in stocks and the accountant's charge of \$306 50, in the second account, for money alleged to have been lent to the testator and interest therefor, which were excepted to on behalf of the surviving sons of the testator and their children, and the children of Adam Fink, deceased.

6. That the principal estate and its annual proceeds are not distinguished, as the will of said testator directs to be done; and that the charge \$306 50, for said lent money, and disallowed by the auditor, is not added, with its interest, to the aggregate amount charged against the accountant in the supplemental report.

7. That the Auditor rejected evidence offered in support of the *first* and *tenth* exceptions (filed on the 3d of May, 1845,) to the accounts, by the children of Adam Fink, deceased, and George Fink.

8. That the Auditor's charges for services and expenses of his audit, are too high and taken out of the estate; that he exceeded his authority in awarding fees to counsels, (not naming them or for whom they acted,) and also \$18 to W. Wilkinson, esq. as expenses of citation, out of the estate, no citation having been issued by Mr. Wilkinson, or any of his clients in said cause, and no claim having been made before the auditor for the said expenses, fees, or any part thereof; and that all the said expenses should (so far as just and lawful, if any,) be paid by the accountant, but no part thereof out of the estate.

[Filed April 17th, 1846, on behalf of George Fink, and his children, and George Adams, jr. in right of his wife, late Fink, and for Richard Carter, in right of Catherine his wife, late Fink, Jacob Fink, a grandson of the testator, and John Kucher and Margaret his wife, late Fink, in her right.]

(Exceptions on behalf of Accountant filed 17 April, 1846.)

“In the matter of Jacob Fink's Estate, sur Auditor's Report, exceptions on the part of the Accountant to said report.

1. The Auditor has erred in striking out of the account the sum of \$306 50, paid by the executor under date of 10 Dec. 1827, and charging him with that sum and interest on it up to the settlement of account, amounting in the whole to \$616 22.

2. The Auditor has erred in rejecting the credit for stock in Girard Bank and the Loan Company purchased for and behalf of the legatees of the testator.

J. PAGE, for Accountant.”

RELEASE—A COPY.

Know all men by these presents, that we, Jacob Fink, Adam Fink, George Fink, sons and devisees of Jacob Fink, sen'r, deceased, and Thomas C. Crouch, guardian of Christian, Adam, and Lawrence, three of the children of Elizabeth Schnaible, one of the said deceased Jacob's daughters, and Thomas C. Crouch and Margaret, his wife, formerly Margaret Schnaible, one of her children since of legal age,

and Catherine and Jacob Schnaible, also children of said Elizabeth, of legal age as aforesaid, with said Margaret Crouch, for and in consideration that Emanuel Krail, acting executor of the said Jacob Fink's last will and testament, has agreed to divide his commissions with the other named executors, and will pay them their equal shares thereof, have agreed and do agree, that all his accounts filed in the Orphans' Court of Philadelphia, shall be confirmed without being audited, and without further delay; and that the interest and dividends upon the estate in his hands shall be distributed amongst the devisees and heirs, and the principal of the moneys of the said estate be also disposed of according to the decree of the said Orphans' Court, in such manner as such decree can be obtained by petition to be presented to the said Court by the counsel of the parties, and the payment to F. E. Brewster, esq. by the said Emanuel Krail, of the said interest, dividends and commissions, shall operate and be a full and entire release to the said Emanuel, of all claims by reason thereof.

In witness &c. 21 November, 1836.

GEORGE FINK, 	his mark.	[SEAL]
THOMAS CROUCH.		[SEAL]
MARGARET CROUCH.		[SEAL]
CATHARINE SCHAIABLE.		[SEAL]
JACOB FINK.		[SEAL]
ADAM FINK.		[SEAL]

Sealed and delivered in the presence of, as to Cath'n Schnaible, Jacob Fink, Adam Fink, and Margaret Crouch,

THOMAS C. CROUCH.

And as to Thomas C. Crouch, Thomas C. Crouch as Guardian, as within stated, and Thomas C. Crouch, Att'y in fact of Jacob Schnaible, in presence of

GEORGE W. BONIN.

Thomas C. Crouch proved on oath before Ald'n Badger, 23 Nov'r 1836, the execution of the above, on settlement of the shares of the parties who have not been paid their proportions of the fund within referred to, viz:

Adam Fink's share,	-	-	-	115 19	
Add his share of commis'ns,	-	-	-	60 83	<hr/>
					176 02
Jacob Fink's share,	-	-	-	176 02	
Deduct Krail's private acct.	-	-	-	50 28	<hr/>
					125 74
George Fink's share,	-	-	-	115 19	
Deduct Krail's private acct.	-	-	-	16 00	<hr/>
					99 19
Lawrence Schnaible,	-	-	-	-	19 19
Christian Schnaible,	-	-	-	-	19 19
Adam Schnaible,	-	-	-	-	19 19
					<hr/>
					8458 52

Rec'd Dec'r 2, 1836, of Mr. E. Krail, \$458 52, above stated, and for the parties above named, under the authority of the within power of attorney to me.

F. E. BREWSTER.

Recorded in Deed book S. H. F. No. 6, page 746, &c.

“ Fink’s Estate—Final balance,	-	-	-	4042 89
From which deduct am’t of sales real estate,	-	-	-	
No. 1,	-	-	2825 00	
2,	-	-	825 00	
			<u>3650 00</u>	

Add int. from Oct. 1, 1835, on \$2825, as up to say 1 Dec. 1836, 1 year and 2 months,	197 75
Added on \$825 from 19 Aug. 36 to 1 Dec. 1836, is 3 months and 11 days,	13 79
	<u>211 54</u>
	<u>\$604 43</u>

This sum to be divided as follows,

1 Jacob Fink,	-	-	-	-	120 88
2 Adam Fink,	-	-	-	-	120 88
3 George Fink,	-	-	-	-	120 89
4 E. Krail’s wife,	-	-	-	-	120 89
5 Elizabeth’s children, to wit,					
1 Margaret,	-	-	20 15		
2 Jacob,	-	-	20 15		
3 Catherine,	-	-	20 15		
4 Lawrence,	-	-	20 15		
5 Christian,	-	-	20 15		
6 Adam,	-	-	20 15		
			<u>120 89</u>		
			<u>604 43</u>		

The commissions on the real estate, \$3650 at 5 p. c.	182 50
Jacob Fink $\frac{1}{3}$ is	60 87
Add his share,	120 89
	<u>181 76</u>
Adam Fink’s share,	181 76

F. E. BREWSTER.

This statement submitted to F. J. Troubat, 25 Nov'r, 1836.”



